IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 6354 of 2005
Date of decision : 24.8.2006.

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Parties Name

Raj Kumar s/o Chhaju Ram

..... Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Puneet Bali and
Sh. Vipin Mahajan, Advocates for the petitioner.

Sh. T.S. Chauhan, Additional Advocate General,
Punjab for respondent No.1.

Sh. Arun Walia, Advocate for respondent No.3

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S.N. Aggarwal, J.

On 23.11.2004, the Punjab Government, Agriculture Department, Mandi Branch issued notification by which the petitioner (Raj Kumar s/o Chhaju Ram) was one of the 10 persons notified as member for Market Committee, Narot Jaimal Singh. On the same date, another notification was issued nominating the petitioner as Chairman of the said Market Committee. Intimation was given to the petitioner by the office of Market Committee, Narot Jaimal Singh (District Gurdaspur) on 2.12.2004 about his nomination and the

petitioner submitted his joining report as Chairman, Market Committee, Narot Jaimal Singh on 3.12.2004.

Soon thereafter, the Punjab Government, Agriculture Department, Mandi Branch, issued another notification dated 10.12.2004 vide which the name of respondent No.3 (Raj Kumar s/o Jagan Nath) was to be read in place of the name of the petitioner as Chairman, Market Committee, Narot Jaimal Singh in the notification dated 23.11.2004. This notification was challenged by the petitioner by filing CWP No. 19559 of 2004. The Hon'ble Division Bench of this Court vide order dated 14.12.2004 issued notice to the respondents for 22.3.2005 and meanwhile had granted the stay order against the notification dated 10.12.2004. However, on 25.2.2005 respondents No. 1 and 2 filed an application for permission to withdraw the notification dated 10.12.2004 as the same was found to be defective. The said notification dated 10.12.2004 was withdrawn by the respondents vide notification dated 1.2.2005. Since the notification dated 10.12.2004 was withdrawn by the respondents vide notification dated 1.2.2005, therefore, CWP No. 19559 of 2004 was disposed of by this Court on 22.3.2005 as having become infructuous.

Thereafter, respondents No. 1 and 2 issued notification dated 8.4.2005 by which the name of respondent No. 3 (Raj Kumar s/o Jagan Nath VPO Rattangarh, District Gurdaspur) was to be read as nominated member in the notification dated 23.11.2004, instead of the name of the petitioner (Raj Kumar s/o Chhaju Ram VPO Baigowal, District Gurdaspur). Another notification was issued by the respondents on the same date by which the name of respondent No.3

was to be read as nominated Chairman in the notification dated 23.11.2004 in place of the name of the petitioner.

These notifications have been challenged by the petitioner by filing the present writ petition.

It was submitted by the learned counsel for the petitioner that admittedly, the petitioner was duly nominated as a member vide notification dated 23.11.2004. He was dully nominated as Chairman on the same date. The petitioner had taken over the charge on 3.12.2004 and the chapter was closed. Thereafter he could be removed only on the grounds stated in Section 15 of the Punjab Agriculture Produce Markets Act, 1961 (in short 'the Act, 1961') and that could also be done only by following the procedure laid down in Section 16(2) of the Act, 1961. Neither those grounds have been made out nor that procedure has been followed. Therefore, the impugned notifications dated 8.4.2005 are vitiated by law. Learned counsel for the petitioner relied upon the judgment of this Court reported as **Madan Lal vs. State of Haryana and another** 1973 PLJ 303.

It was further submitted by learned counsel for the petitioner that the principles of natural justice have not been followed. The petitioner has been removed from membership and chairmanship of the Market Committee, Narot Jaimal Singh without giving him an opportunity of being heard. He was not even asked to participate in the enquiry. Therefore, the impugned notifications dated 8.4.2005 cannot be sustained. Learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court reported as **Ram Ujare**

vs. Union of India 1999 (2) All India Services Law Journal 43 and **State of Orissa vs. Dr. (Miss) Binapani Dei and others** 1967 SLR 465. He also relied upon the Division Bench judgment of this Court reported as **Virendra Chawla vs. The Chandigarh Adminsitration and another** 1984 (1) SLR 452.

The next submission of learned counsel for the petitioner was that if there was a clerical error, as pleaded by the respondents, then the respondents were required to file a detailed affidavit pointing out the circumstances in which the mistake took place. This Court had also directed the respondents to file an affidavit vide orders dated 8.9.2005 and 6.12.2005. But no such affidavit was filed.

The next submission of learned counsel for the petitioner was that while admitting this writ petition on 16.12.2005, this court had directed that the case be listed for hearing after the completion of enquiry. It was on this date that the State counsel had submitted before the Court that the enquiry was in progress. However, the learned counsel for the petitioner made reference to the letter dated 13.7.2006 placed on the file by the respondents in which the date of enquiry report is shown as 24.11.2005. It was therefore, submitted that on one hand the respondents had taken the plea that the enquiry report was completed on 24.11.2005 and on the other hand it was projected before this Court on 16.12.2005 that the enquiry was still in progress.

Hence it was prayed that the respondents have misled the Court and the impugned notifications be set aside.

On the other hand, the submission of the State counsel was

that the name of the petitioner had crept in the notification dated 23.11.2004 by a clerical error, rather by a mischief committed by a smaller functionary, while in fact, the name of respondent No.3 was approved by the Chief Minister, who was Minister-in-charge of the Agriculture Department. Reference was made to the letter dated 13.7.2006, placed on the file by the State, alongwith the necessary documents in support of this submission. The original file was also shown at the time of arguments.

A perusal of the file clearly reveals that the Chief Minister, Punjab, had approved the nominations of 36 Market Committees including for the Market Committee, Narot Jaimal Singh, (District Gurdaspur) on 19.11.2004 and a draft notification relating to Market Committee Narot Jaimal Singh in which the name of Raj Kumar Mahajan s/o Jagan Nath VPO Rattangarh, District Gurdaspur (respondent No.3) alongwith other names, was included. However, when the notification was issued on 23.11.2004, in compliance with the order of the Chief Minister, Punjab dated 19.11.2004, the name of the nominated member was stated as Raj Kumar s/o Chhaju Ram VPO Baigowal, District Gurdaspur (petitioner) in place of the name of Raj Kumar son of Jagan Nath. This clearly reveals that the name of respondent No.3 was mentioned in the draft notification which was approved by the Chief Minister on 19.11.2004, while the name of the petitioner was wrongly stated in the notification dated 23.11.2004 without its approval by the competent authority.

The submission of the learned counsel for the petitioner was that in the draft notification the month of September 2004 is

mentioned, while the approval by the Chief Minister was recorded on 19.11.2004. Therefore, this draft notification was not the original notification approved by the Chief Minister.

This submission, however, has no force at all. There is no other draft notification relating to the nomination of members of Market Committee, Narot Jaimal Singh, which was approved by the Chief Minister. It appears that this draft notification was prepared in September 2004, which was duly approved by the Chief Minister only on 19.11.2004. This draft notification makes reference to the name of respondent No.3 specifically and not to the name of the petitioner. Obviously therefore, the name of the petitioner emerged in the notification dated 23.11.2004 by an omission or by the clerical error or by the mischief played by a smaller functionary.

In the letter dated 13.7.2006 placed on the file by respondents no.1 and 2, it is clearly stated that nomination of respondent No.3 was approved by the Chief Minister as member of the Market Committee, Narot Jaimal Singh, and so also for the chairmanship of the Market Committee, Narot Jaimal Singh. But the name of the petitioner was inserted during that process by the fault of the officials. Even the liability of Gurmeet Singh, Senior Assistant of the Mandi Branch was fixed and he was even administered with a warning to be careful in future. These documents placed on the file and the original file which was shown to the Court leave no manner of doubt that it was a clear cut case of mischief played by Gurmeet Singh, Senior Assistant by which the name of the petitioner emerged in the notification dated 23.11.2004 in place of the name of

respondent No.3 Raj Kumar s/o Jagan Nath r/o VPO Rattangarh.

Learned State counsel produced in the Court another file at the time of arguments, according to which, this mistake was noticed on 8.12.2004. In the office noting dated 8.12.2004, it was noticed that Rumal Chand Attri, MLA, Narot Jaimal Singh, District Gurdaspur had pointed out that Raj Kumar s/o Jagan Nath VPO Rattangarh was nominated as the Chairman, but his father's name has been wrongly recorded and the same has been shown as Raj Kumar s/o Chhaju Ram. Therefore, he prayed for its correction. Immediately, thereafter the notification dated 10.12.2004 was issued for reading the name of respondent in place of the name of the petitioner as nominated Chairman of Market Committee, Narot Jaimal Singh in the notification dated 23.11.2004. It is, clear therefore, that the name of the petitioner in the notifications dated 23.11.2004 was the result of error or of mischief and it was sought to be corrected immediately after it had come to the notice. It is a different matter that the said notification dated 10.12.2004 had to be withdrawn because of legal defects in it.

So far as the non-filing of affidavit is concerned, it is of no consequence when the material documents have been placed on the file by the respondents. These documents clearly reveal that the name of respondent No.3 was approved as a member of the Market Committee, Narot Jaimal Singh by the Chief Minister on 19.11.2004 and the same was supposed to be there in the notification dated 23.11.2004 in place of the name of the petitioner. Admittedly only the nominated member could be further nominated as Chairman.

Similarly, the enquiry report dated 24.11.2004 was being conducted by the Secretary, Market Committee. It may not be in the knowledge of the Additional Advocate General, Punjab when he appeared in the Court on 16.12.2005. In any case, much cannot be read into it.

The submission of the learned counsel for the petitioner that he has been removed from the office of Chairman, Market Committee, Narot Jaimal Singh without following the procedure laid down by law and not on the statutory grounds and without affording him an opportunity of being heard, are also without any merit. For considering these submissions, it is necessary to peruse the notification dated 8.4.2005 by which the name of respondent No.3 was ordered to be read in place of the name of the petitioner in the notification dated 23.11.2004 as member of the Market Committee, Narot Jaimal Singh. It reads as under :-

" PUNJAB GOVERNMENT
AGRICULTURE DEPARTMENT
(MANDI BRANCH)

AMENDMENT LETTER

No. 1/25/04/-M3/2946 Dated: 08.04.2005

In exercise of the powers conferred under Sub Section (1) of Section 16 of Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No.23 of 1961), the name of Member nominated vide notification No. 1/25/04-S3/7649 dated 23.11.2004 of Narot Jaimal Singh district Gurdaspur, be read as Sh. Raj Kumar S/o Sh. Jagan Nath,

VPO Rattangarh, District Gurdaspur, instead of Sh. Raj Kumar S/o Sh. Chhaju Ram VPO Baigowal District Gurdaspur.

Sd/-
P.K. Verma
Financial Commissioner Development
& Principal Secretary
Punjab Government
Agriculture Department."

Similarly, another notification dated 8.4.2005 was issued according to which also the name of respondent No.3 was to be read in place of the name of the petitioner in the notification dated 23.11.2004 as Chairman of the Market Committee, Narot Jaimal Singh. It reads as under :-

" PUNJAB GOVERNMENT
AGRICULTURE DEPARTMENT
(MANDI BRANCH)

AMENDMENT LETTER

No. 1/25/04/-M3/2949 Dated: 08.04.2005

In exercise of the powers conferred under Sub Section (1) of Section 16 of Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No.23 of 1961), the name of Chairman nominated vide notification No. 1/25/04-S3/7649 dated 23.11.2004 of Narot Jaimal Singh district Gurdaspur, be read as Sh. Raj Kumar S/o Sh. Jagan Nath, VPO Rattangarh, District Gurdaspur, instead of Sh. Raj Kumar S/o Sh. Chhaju Ram VPO Baigowal District Gurdaspur.

Sd/-

P.K. Verma
Financial Commissioner Development
& Principal Secretary
Punjab Government
Agriculture Department."

These notifications, therefore, clearly reveal that only the clerical error has been removed, which had crept into the notifications dated 23.11.2004, may be because of the mischief played by some functionary of the Government/Mandi Board. Since the name of the petitioner was never approved as nominated member or as nominated chairman of the Market Committee, the question of his removal does not arise. The petitioner has enjoyed the office of nominated member and nominated chairman illegally and by these notifications only the illegality has been set right.

The question of removal of the petitioner from the office of nominated member or nominated chairman of the Market Committee, Narot Jaimal Singh would have arisen only if he had been nominated to these offices in accordance with law. But as discussed above the office record of the respondents, copies of which have been placed on the file, clearly make out that the name of the petitioner was never approved for the office he assumed.

So far as the judgment of the Hon'ble Supreme Court in **Ram Ujarey's case** (supra) is concerned, the facts were entirely different. On the facts of that case, the Hon'ble Supreme Court was pleased to observe that the order of promotion was not a mistake, as was observed in the following paragraph :-

"Having perused the original record and having found that the appellant, who was initially appointed as Khalasi

> in 1964, was given temporary status in1965 and was confirmed from 11.4.1965, we are of the positive opinion that it was not a case of mistake on the part of Administration, as contended by Mr. Goswami, but they had rightly given the benefit of previous service to the appellant who was, as a consequence thereof, rightly called for trade tests for the posts of Semi-skilled Fitter and Skilled Fitter and having passed those tests was rightly promoted on those posts."

In these circumstances, the Hon'ble Supreme Court was pleased to observe as under :-

> "If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled."

In the facts of the present case, the name of the petitioner was never approved for being nominated as a member or as a chairman of Market Committee, Narot Jaimal Singh . In fact the name

of respondent No.3 was approved. However, the name of petitioner was inserted in the notification because of mischief played by lower functionary of the Government/Mandi Board.

Similarly, in **Dr. (Miss) Binapani Dei's case** (supra), she was retired from service after considering her date of birth to be the different date, which was earlier recorded in her service record. It was in this context that the Hon'ble Supreme Court was pleased to observe as under :-

> "It is one of the fundamental rules of our Constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed, it need not be shown to be super-added. It there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

These observations were made by the Hon'ble Supreme Court in a case where the respondent had the right to continue in service and it was held that the order of her retirement was to be passed after hearing her. But in the present case, the name of the petitioner was never approved by the competent authority for being

nominated as a member or as a chairman and, therefore, the petitioner had virtually no right to be appointed as a member or as a chairman. He assumed that position by illegality. Therefore, no right had come to be vested in the petitioner merely because his name was inserted in the notification by mischief. The observations of the Hon'ble Supreme Court in **Dr. (Miss) Binapani Dei's case** (supra) are clearly not applicable to the facts of the present case. The petitioner had no right to continue as he was sitting on the volcano of illegality. He was a usurper by mischief.

The judgment in **Virendra Chawla's case** (supra) also did not apply to the facts of the present case because the petitioner of that case was originally promoted by the Principal i.e. by the competent authority and then was demoted. In the present case, the name of the petitioner was never approved by the competent authority. Therefore, he had no right to be there in the notification dated 23.11.2004.

In the name of granting an opportunity to the petitioner before passing of notifications dated 8.4.2005, the illegality can never be perpetuated in for a minute, once it has been detected. This is the intention of law. It is, therefore, held that by these notifications, only the illegality has been removed. The petitioner, whose name was never approved as nominated member or as nominated chairman and whose name had illegally crept in these notifications dated 23.11.2004, has no right to be heard before correcting the errors as no legal right of the petitioner has been violated.

For the same reasons, the judgment in **Madan Lal's case**

(supra) did not apply because in **Madan Lal's case** (supra), he was appointed in accordance with law and therefore, he was required to be removed in accordance with law. But in the present case, the petitioner has come by illegality. His name was never approved by the competent authority i.e. the Minister-incharge of Agriculture Department, to be a member/chairman of Market Committee Narot Jaimal Singh. The name of the petitioner had just crept in the notification because of the mischief of a lower functionary. Therefore, it is not a case where the petitioner is being removed as he was never nominated after approval by the competent authority.

For the reasons discussed above, the judgments relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case. Since, the name of the petitioner was illegally mentioned in the notifications without proper approval, therefore, the petitioner had no right to be there as member/chairman of the Market Committee, Narot Jaimal Singh.

Accordingly, this Court finds no illegality in the notifications dated 8.4.2005. The same are upheld.

There is no merit in the present petition and the same is dismissed.

(S.N.Aggarwal)
Judge

24.8.2006.
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